

To: Dunbar, Bill[dunbar.bill@epa.gov]
From: Burgess, Jami
Sent: Tue 4/12/2016 8:45:57 PM
Subject: Fwd: NaturalResources: Dear Colleague: Hold EPA Accountable: Sign a Bipartisan Letter Demanding EPA Provide Answers on Federally-Funded Lobbying

From: e-Dear Colleague
Sent: Monday, April 11, 2016 10:06 AM
To: E-DEARCOLL_ISSUES_G-Z_0000@ls2.house.gov
Subject: NaturalResources: Dear Colleague: Hold EPA Accountable: Sign a Bipartisan Letter Demanding EPA Provide Answers on Federally-Funded Lobbying

Hold EPA Accountable: Sign a Bipartisan Letter Demanding EPA Provide Answers on Federally-Funded Lobbying

From: The Honorable Brad Ashford
Sent By: chris.kelley1@mail.house.gov
Date: 4/11/2016

Dear Colleague,

Many of you are aware of GAO's report from December 2015 [finding that EPA violated federal lobbying and advocacy laws](#) by funding social media campaigns supporting EPA's Waters of the United States (WOTUS) Rule. Most recently, [EPA admitted that it should not have funded another campaign](#) in Washington State known as whatsupstream.com, due to that campaign's brazen lobbying of state legislators in contravention of federal law. The whatsupstream.com campaign, which was wholly funded by EPA, used grant awards to fund a website, radio ads, and billboards depicting dead fish and polluted water, urging individuals to contact their state legislators and, "hold the agricultural industry to the same level of responsibility as other industries." A large, red button on the website labeled, "Take action! We've made it simple," allows visitors to easily send an email to their state legislators advocating for 100-foot stream buffer zones and other policies.

To make matters worse, an EPA Inspector General's report from 2014 warned that the EPA region responsible for awarding the grant had insufficient protections in place to ensure awardees were not using funds for advocacy, propaganda, and/or lobbying efforts.

Regardless of the campaign's goals, there are laws in place strictly prohibiting federal agencies from funding lobbying and/or advocacy efforts on any federal, state, or local laws and regulations. This campaign represents the second instance in several months that EPA has funded lobbying efforts blatantly in violation of federal law. EPA cannot systematically choose when it wishes to follow the law and when it does not. **We invite you to join us in a letter to EPA Administrator McCarthy that demands answers from EPA on this disturbing trend, and strongly advises the Agency to fully and swiftly cooperate with the imminent investigations into these matters. The deadline for signing on is Thursday, April 14th at COB.** If you have any questions or would like to sign on, please contact Kyle Kunkler (kyle.kunkler@mail.house.gov) with Representative Newhouse at 5-5816 or Chris Kelley (Chris.Kelley1@mail.house.gov) with Representative Ashford at 5-4155.

Sincerely,

Dan Newhouse
Member of Congress

Brad Ashford
Member of Congress

April XX, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

Dear Administrator McCarthy,

We write to you today to express our extreme concern with the Environmental Protection Agency (EPA) Region 10 funded whatsupstream.com website and campaign, which recently has come to our attention. While we appreciate EPA's recent admission that wrongdoing occurred and that the campaign should never have been federally funded¹, we are still confused why EPA would have approved an award clearly violating a number of federal laws pertaining to funding propaganda, advocacy, and lobbying efforts. We find this revelation particularly disturbing, as it follows closely to both the EPA Office of Inspector General (OIG) questioning of Region 10's award monitoring and a December 2015 Government Accountability Office (GAO) report that found EPA had committed similar violations on social media advocacy campaigns supporting EPA's Waters of the United States (WOTUS) regulation (also known as the "Clean Water

Rule”).

As you are no doubt aware, federal law clearly directs that, “No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.”² Further restrictions clearly prohibit federal funds being used for many of the advocacy and publicity materials used by the whatsupstream.com campaign, including publications, radio, and electronic communications³. Despite this stark prohibition, the website whatsupstream.com has a button at the top of its site directing visitors to, “Take Action! We’ve made it simple.” This button loads auto-generated text that will be sent to the visitor’s respective Washington State legislators, urging the legislators to support, “stronger laws protecting the health of our water resources in Washington,” by encouraging, “100-foot natural buffers between agriculture lands and streams.” Additionally this site asserts that, “state government must hold the agricultural industry to the same level of responsibility as other industries....” To be clear, whatsupstream.com has a disclaimer at the bottom of its website stating, “This project has been funded wholly or in part by the United States Environmental Protection Agency.” Based on our review of EPA Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS) project reports, it appears that this campaign has been wholly funded by the EPA with no matching funds provided by any private or state and local government entities.⁴

Currently, the Washington State Department of Ecology is in the process of renewing the requirements for its National Pollutant Discharge Eliminations System (NPDES) permits for Concentrated Animal Feeding Operations (CAFOs). The Washington State legislature has also considered other water quality and agricultural related legislation during this same time period. These state regulatory and legislative initiatives were pending and under consideration during the same time of the lobbying efforts funded by EPA.

What is more disturbing is that a July 14, 2014 report by the EPA’s OIG found that Region 10 EPA project officers, “emphasized overall progress rather than compliance with specific subaward requirements. This emphasis on overall progress increased the risk that project officers would not detect issues needing corrective action that might impact the project meeting its goals.” The report also found that of a sample of ten different EPA subawards, only three had protocols in place to ensure 501(c)(4) subaward recipients did not engage in lobbying activities.⁵ Despite these warning signs, an October 30, 2015 EPA Region 10 FEATS report pertaining to the whatsupstream.com project concluded that, “As a result of extensive review and engagement by EPA, we have been revising the website, and have to [*sic*] restarted media outreach”.⁶ This conclusion would seem to suggest that, even in spite of OIG’s report, EPA reviewed, engaged, and approved of the current whatsupstream.com website that is in blatant violation of federal law.

As mentioned, on December 14, 2015, GAO issued an opinion finding that EPA violated propaganda and anti-lobbying laws by using certain social media platforms in association with the WOTUS regulation. By obligating and expending appropriated funds in violation of specific prohibitions contained in appropriations acts for fiscal years 2014 and 2015, GAO found EPA also violated the *Antideficiency Act*.⁷ The whatsupstream.com campaign appears to be part of an alarming trend where EPA engages in funding advocacy efforts against the very entities it is

seeking to regulate. EPA cannot systematically choose when it wishes to follow the law and when it does not. Congress has made it explicitly clear that EPA's funding may not be used, "for publicity or propaganda purposes designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government."⁸

We are aware that Senators Inhofe and Roberts recently sent a letter to the EPA OIG requesting an official audit and investigation into the whatsupstream.com campaign and related activities, and the House Committee on Agriculture is conducting a related oversight investigation of EPA grant management. We fully support these requests, and strongly advise EPA's full and swift cooperation with all investigations and imminent oversight inquiries into this matter.

Sincerely,

Dan Newhouse
Member of Congress

Brad Ashford
Member of Congress

cc: Mr. Gene Dodaro, Comptroller General, U.S. Government Accountability Office
Mr. Arthur Elkins, Jr., Inspector General, Environmental Protection Agency

1. Don Jenkins, *Capital Press*, April 5, 2016, http://www.capitalpress.com/Nation_World/Nation/20160405/epas-reversal-on-whats-upstream-rings-hollow-to-ag-groups
2. *Consolidated and Further Continuing Appropriations Act, 2013*, Public Law 113-6, 127 Stat. 269 (2013)
3. *Consolidated Appropriations Act, 2014*, Public Law 113-76, 128 Stat. 408 (2014)
4. EPA Puget Sound Financial and Ecosystem Accounting Tracking Systems, PA-00J322-01, September 30, 2015, <http://blogs.nwifc.org/psp/files/2016/02/Swinomish-FY12-4.1.15-9.30.15.pdf>
5. Collins, Eileen et al., *EPA Should Improve Oversight and Assure the Environmental Results of the Puget Sound Cooperative Agreements* (EPA OIG Report No. 14-P-0317) (Washington, DC: Environmental Protection Agency Office of Inspector General, 2014), 8, <https://www.epa.gov/sites/production/files/2015-09/documents/20140715-14-p-0317.pdf>
6. EPA Puget Sound Financial and Ecosystem Accounting Tracking Systems, PA-00J322-01, October 30, 2015, <http://blogs.nwifc.org/psp/files/2016/02/Swinomish-FY13-4.1.15-9.30.15.pdf>
7. Poling, Susan A., *Environmental Protection Agency--Application of Publicity or Propaganda and Anti-Lobbying Provisions* (B-326944) (Washington, DC: U.S. Government Accountability Office, 2015), <http://www.gao.gov/assets/680/674/674163.pdf>
8. *Consolidated and Further Continuing Appropriations Act, 2015*, Public Law 113-235, 128 Stat. 2393 (2014)

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